IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 279 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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PIRUBHAI JANIBHAI SHEIKH - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MM TIRMIZI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR MG NAGARKAR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 23/07/2007

ORAL JUDGMENT

1.0 By way of this application, the applicant has prayed to quash and set aside the judgment and order of the learned Additional City Sessions Judge, Ahmedabad dated 23.02.1999 passed in Criminal Appeal No.64 of 1996.

2.0 Before the matter was taken up for final hearing, learned Advocate for the applicant fairly conceded that he is not in a position to

argue the matter on merits. However, he has requested that as regards the aspect of quantum of punishment imposed on the applicant is concerned, the same may be considered sympathetically.

3.0 The brief facts of the case are that the original complainant-Mr. M.S. Pandya who was serving with the Ahmedabad Municipal Corporation as Food Inspector, at the relevant point of time, went to the shop run buy the present applicant in the name of 'Salim Faluda Centre' and purchased a sample of ice cream. Mr. Pandya, thereafter, sent the said sample for analysis to the Public Analyst. Since, as per the report of the Public Analyst, the sample collected from the shop of the applicant was not found in conformity with the prescribed standards, a complaint for the offence punishable under Section 7 read with Section 16(1)(A)(i) of the Prevention of Food Adulteration Act, 1954 came to be registered against the applicant.

3.1 In pursuance to that the applicant was convicted by the trial Court for the alleged offence and was sentenced to undergo rigorous imprisonment for one year and was imposed fine of Rs.2000/- and in case of default was ordered to undergo simple imprisonment for a further period of one month.

3.2 Being aggrieved with the order of the trial Court, the applicant preferred an appeal. The appellate Court was pleased to confirm the order passed by the trial Court. Hence, the present application.

4.0 Heard learned Counsel for the parties and perused the documents placed on record. Before proceeding with the matter, here, it would be relevant to refer to a decision of the Hon'ble Apex Court in the case of ***"Haripada Das Vs. State of West Bengal and Another"*** reported in AIR 1999 SC 1482 wherein at Para-6 it was held as under,

> **"6.** ...Although in the samples drawn by the Food Inspector, no impurity or objects injurious to health could be detected but it was found that the saponification value exceeded marginally than the prescribed limit and the B.R. Reading also exceeded marginally than the prescribed limit. Considering the facts and circumstances of the case and also considering that the appellant was released on bail by this Court long back and because of the protracted litigation up to this Court he has also suffered a lot of mental agony and also financial hardship and also considering the fact that he had already undergone imprisonment for more than three weeks, we feel that in the facts of the case end of justice will be met if the sentence is reduced to the period already undergone..."

4.1 Similar principle has been followed by this Court in the case of ***"State of Gujarat VS. Ranchhodbhai Prahladdas Patel"*** reported in 2004(4)GLR 3125.

4.2 In the case on hand, from the record it transpires that the alleged incident took place in the year 1990 and in connection with the aforesaid offence, the applicant was arrested on 23.02.1999. Thereafter, the applicant was

released on bail on 27.05.1999 by the competent Court. Hence, it is evident that the applicant is out of judicial custody for almost eight years and is leading a normal life. It is also pertinent to note that during the intervening period i.e. from the date of registration of the aforesaid offence against the applicant to till date no such other offence is registered against the applicant. The applicant is a small shop-keeper and the offence against him is registered under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act. In connection with the offence in question, the trial is still pending for a very long time and on account of the pendency of the trial, the applicant has suffered both financially and mentally.

4.3 In view of the above discussion and the fact that the applicant has already suffered a lot on account of the offence in question and that there are no criminal antecedents as well as taking into consideration the decision of the

Hon'ble Apex Court in the case of ***"Haripada Das"***(Supra) and of this Court in the case of ***"State of Gujarat"***(Supra), I am of the opinion that the ends of justice would be met by reducing the sentence from one year rigorous imprisonment to the period already undergone and upholding the fine imposed by the trial Court.

5.0 The application is partly allowed. The sentence of one year rigorous imprisonment imposed by the trial Court and confirmed by the appellate Court is reduced to the period **ALREADY UNDERGONE** by the applicant. The judgment and order of the learned Additional City Sessions Judge, Ahmedabad dated 23.02.1999 passed in Criminal Appeal No.64 of 1996 is modified to the aforesaid extent. Rule is made absolute to the aforesaid extent.

(M.D. Shah,J.)

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